

SBCivil Writ Petition No.3441/2003

Abhay Singh
Vs.
State of Rajasthan & Ors.

Date of Order :: 14th August, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.Mridul, Sr.Advocate assisted by Mr.R.N.Upadhyay,
for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

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By this petition for writ validity, propriety and correctness of the order dated 13.3.2003 passed by the Deputy Inspector General of Police, Udaipur Range, Udaipur, exercising powers under Rule 23 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958"), is called for. By the order aforesaid the appellate authority affirmed the order dated 3.7.2002 passed by the disciplinary authority.

In brief, facts of the case are that the petitioner while holding the post of Constable in Rajasthan Police at Police lines, Rajsamand was served with a memorandum dated 3.1.2002 under Rule 16 of the Rules of 1958 alleging five charges of misconduct. Essentially all the charges relate to unauthorised absence from duty for a period of about 570 days in 19 terms. The petitioner denied the charges and, therefore, was subjected to an inquiry in accordance

with Rule 16 of the Rules of 1958. The inquiry officer after examining 10 prosecution witnesses, four defence witnesses and certain documents produced in defence submitted a report of inquiry to the disciplinary authority on 7.2.2002 holding the petitioner guilty for all the five charges. The disciplinary authority under a notice dated 24.5.2002 sought petitioner's comments on the findings of the inquiry officer and also proposed to impose a major punishment. In the notice dated 24.5.2002 the term used is major punishment and no specific major punishment such as dismissal, removal, compulsory retirement or reduction in rank is referred. In pursuant to the notice dated 24.5.2002 the petitioner failed to submit any explanation. The disciplinary authority then passed the order dated 3.7.2002 imposing a penalty of dismissal upon the petitioner. Being aggrieved by the order of dismissal the petitioner preferred an appeal before the Deputy Inspector General of Police, Udaipur Range, Udaipur, that came to be rejected by order dated 13.3.2003. Hence this petition for writ is preferred under Articles 226 and 227 of the Constitution of India.

The contention of counsel for the petitioner while giving challenge to the orders passed by the appellate authority as well as disciplinary authority are:-

(1)that the inquiry report is not reasoned and speaking as the evidence produced by the prosecution as well as by the defence has not been discussed by the inquiry officer;

(2)that the order passed by the disciplinary authority is also not speaking and reasoned one. Then findings given by the disciplinary authority are not supported by reasons; and

(3)that the order passed by the appellate authority is not in accordance with Rule 30 of the Rules of 1958 that prescribes mode to consider an appeal preferred by a government servant giving challenge to an order passed by the disciplinary authority imposing a penalty.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner is a habitual absentee and on various occasions he suffered penalties for misconduct pertaining to remaining absent from duties. It is also alleged that the petitioner is not a person disciplined required to be in police force. It is emphasised that the entire disciplinary proceeding was conducted in accordance with the Rules and sufficient opportunity was given to the petitioner to defend himself.

Heard counsel for the parties.

The first contention of counsel for the petitioner is that report of inquiry officer is not a speaking and reasoned one. It is pointed out by counsel for the petitioner that the inquiry officer after giving reference of the charges levelled reproduced the statements given by the prosecution witnesses. No reference in inquiry report is given with regard to defence witnesses viz. Bhanwar Singh Rathore (DW-1), Bagh Singh (DW-2), Kundan Singh (DW-3) and Maal Singh (DW-4). The inquiry officer, according to counsel for the petitioner, while holding the petitioner guilty for the charges levelled has not even discussed the statements given by the prosecution witnesses. He merely reproduced the statements and gave a finding against the petitioner. I have minutely examined the inquiry report. From perusal of it, it is apparent that the inquiry officer in totality reproduced the statements given by the prosecution witnesses and also reproduced the written given by the delinquent employee and then merely by saying that on basis of evidence produced by the prosecution allegations stand proved. It is well settled that the inquiry officer while making an inquiry is not only required to collect evidence but is also require to discuss the same and then to reach at a specific conclusion by analysing the evidence produced before him. The inquiry officer should give reasons to believe or disbelieve the evidence produced before

him. No finding can be given just by reproduction of the evidence produced before him. No discussion of alleged analysis of the evidence produced is made. Even reference of the defence witnesses is not made. The reasons to substantiate the conclusion are missing in the report of inquiry. These are the reasons only that carries an inquiry to the definite conclusion, therefore, a conclusion without reasons is a finding without foundation. In the instant matter, as stated above, the findings are not supported by reasons, therefore, the same lacks foundation.

The next contention of counsel for the petitioner that the order passed by the disciplinary authority is also not a speaking and reasoned one, I have examined the same also. The order passed by the disciplinary authority is an order of concurrence with the findings given by the inquiry officer. The disciplinary authority has also not discussed the evidence produced before the inquiry officer. The disciplinary authority also merely by reproducing the contents of the inquiry report found the petitioner guilty for misconduct. It is well settled and also a requirement of the Rules of 1958 that the disciplinary authority must give a specific finding supported by reasons against each and every charge. In the instant matter the finding is certainly available but the same is not supported by any reason.

What appears from perusal of the order passed by the appellate authority is that he too by making a reference of requirements of Rule 30 of the Rules of 1958 disposed of the appeal preferred by the petitioner but has not really examined the appeal preferred by the petitioner in accordance with Rule 30 of the Rules of 1958. The appellate authority should have considered and decided all the contentions raised by the delinquent employee in memo of appeal. He should have also examined the implication of penalty imposed. In present case the mode prescribed under Rule 30 of the Rules of 1958 to consider an appeal is apparently not adhered in its true spirit.

Beside the above, it is pertinent to note that the disciplinary authority while giving a notice to the delinquent employee for tentative decision to impose penalty has not referred the specific proposed punishment. The disciplinary authority simply mention that he proposed to impose a major penalty. Rule 14 of the Rules of 1958 prescribes various major penalties and it is always desirable to mention the specific penalty that is proposed to be inflicted upon the government servant. The non giving specific tentative penalty denies the government servant a right to submit an effective explanation. It is true that major punishments are under one category under the Rules but each and every penalty is having different implication. The effect of the penalties of reduction

in rank, compulsory retirement, removal from service and dismissal from service are different. If a government servant is not aware about specific tentative penalty, he may not be in position to explain all the circumstances effectively. It is very much possible that a government servant may accept the penalty of reduction in rank or compulsory retirement but may not accept the penalty of removal or dismissal from service and he may say something more for these penalties than to other punishments. In view of it the mention of specific punishment proposed to be inflicted is always desirable in the notice seeking explanation before imposing punishment.

As I have already held that the orders passed by the appellate authority, disciplinary authority and even the inquiry report are non speaking and unreasoned, therefore, I would have quashed these orders and remanded the matter for giving a speaking and reasoned inquiry report, however, looking to the fact that the petitioner is suffering from mental illness and as also proposed by counsel for the parties I consider it appropriate to consider the issue of imposing punishment upon the petitioner on basis of the material available. The petitioner entered in service of the respondents on 19.2.1977 and no charge except remaining absent from duties is suffered by him. The allegation of absence from duty without authority too is quite serious, however, what

reveals from perusal of the evidence available on record is that the petitioner is suffering from some mental disorder and for that he was taking treatment by "Ojhas". It may not be scientific and a proper treatment but we cannot shut our eyes from the prevailing unawareness about medical science and blind faith with non scientific old methods of treatment with religious essence. The petitioner was admittedly undergoing such treatment and, therefore, the absence of the petitioner is unauthorised but was beyond his control. He served Rajasthan Police for a period of about 25 years and is suffering from mental illness this fact clearly establishes that he requires support to sustain and support himself and his family. In these circumstances the penalty of dismissal or removal from service shall be too harsh to be imposed. In view of it, order imposing the penalty of dismissal is modified by substituting the penalty of compulsory retirement in place of the penalty of dismissal. The petitioner shall be entitled for pensionary and other post retirement benefits.

The petition for writ is disposed of accordingly.

(GOVIND MATHUR), J.

kkm/ps.